Special Issue on the New Anti-Communist Law

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The Panic of A Mob on Capitol Hill

I

The day Congress passed its new anti-Communist law, Senator Morse said the Senate's earlier unanimous vote to outlaw the Communists was "a tremendous psychological blow against communism in the world." Of all the confusions in that confused week of debate, this deserves to be singled out as the most confused.

Congress did not deliver a blow at the Communist world. It paid that world the highest compliment it could. Congress said that the richest and most powerful country of the non-Communist world was so afraid of its tiny minority of Communists* that the United States was turning its back on its own traditions. For the Communists, outlawry is not a signal of strength but of weakness. In the three countries where communism has come to power on its own, in Russia, in China and in Yugoslavia, persecution and outlawry of various kinds, far more stringent and savage than anything yet attempted here, was the prologue to victory. It was underground that Lenin, Mao and Tito found the path to power.

The blow Congress struck was at those non-Communist countries which have looked to the United States as a center of stability and of support. It is not so much Congressional enactment, bad as that was; it is Congressional behavior which must stir the deepest misgivings. For the shifting and tempestuous debate demonstrated how badly the situation in this country has deteriorated. No one can say there is not fear in America when one sees how liberals in Congress stampeded and jettisoned their principles like so much baggage in a shipwreck lest they be termed pro-Communist.

Humphrey of Minnesota, who led the liberal Democratic panic, said self-defensively at one point, "we are not organizing vigilantes." They were not organizing vigilantes but they certainly acted like a mob. The liberals voted for an outlawry measure they privately realized would undermine the Constitution. The rightists were afraid not to vote with them though this measure threatened to undermine their prize achievement, the Internal Security Act of 1950. The momentum of panic and moral disintegration was evident. The other countries of the non-Communist world must ask themselves how dependable and safe is alliance with a country where the Congress is imprisoned by anti-Communist demagogy. How can rational action be expected of it if fear of seeming "soft on Communism" is so powerful?

It has been suggested that the main reason for the Humphrey-Douglas-Kennedy-Morse outlawry bill was to provide a measure so extreme that it would block effective anti-Communist legislation, particularly the Butler-Brownell bill to subject trade union and other "Communist infiltrated" organizations to the Subversive Activities Control Board. Humphrey and his collaborators did indeed offer their measure when the Magnuson resolution was defeated 31 to 57. This resolution was intended to delay action on the Butler bill until a Presidential commission of inquiry could study the subject. When that failed, Humphrey produced the outlawry bill as a substitute for the Butler bill. But that same night when Daniel of Texas tacked the Butler bill onto the Humphrey outlawry measure, the only supporter of the Humphrey bill who voted "no" was Lehman of New York. All the other liberal Democrats forgot their supposed objective and the Senate voted 85 to 1 for the Daniel amendment and then 85 to 0 for the combined bill.

Competition in Red-Baiting

The real motivations were unmistakable. "I am tired," Humphrey said in introducing the outlawry measure, "of reading headlines about being a leftist." Morse, in seconding him, said the purpose of the bill was "to remove any doubt in the Senate as to where we stand on the issue of communism." A few days later, when the White House intervened against the outlawry bill, Morse gloated on the Senate floor, "Let the public understand who is trying to save the Communists in this country from prosecution, individual by individual, for the conspiracy to which they belong. It now appears that the White House thinks the Senator from Minnesota is a little too harsh on the Communists." The day the anti-Communist law finally passed, Morse was jubilant. "Last Thursday," he told the Senate, "the Republicans were surprised and shocked because they discovered that what was up to that time obviously to be one of the smear tactics of the oncoming campaign had fallen flat on its face . . . After Thursday they could not very well argue that the liberals were soft on communism . . ."

II

There do not seem to be any liberals—in the real sense of the word—left in the U.S. Senate. A striking feature of the week's debate was the absence of appeal to the traditional doctrines of liberalism, as expounded from Jefferson to John Stuart Mill. Kefauver, the only Senator to vote against the outlawry bill, was the only Senator to mention Jefferson. But the familiar words Kefauver quoted—about "the safety with which error of opinion may be tolerated when reason is free to combat it"—was not the main premise of his own opposition.

Kefauver said he took "a most unpopular position" in voting against outlawry because this "would confuse the operation of the Smith Act, which I supported and voted

*The "findings of fact" framed by Senators Humphrey, Douglas, Kennedy and Morse might lead one to suppose that the Communists were to be outlawed because they showed little sign of ever succeeding! "The Communist party," the findings recite, "is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means."

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Humphrey and Morse Led The Liberal Pack for Outlawry...

for as a House member and . . . that it would nullify the registration provision of the Internal Security Act." Two days earlier Kefauver had explained to the Senate that "while I did not vote for the internal security bill, I now feel it may do some good . . ." This lone champion of American liberalism voted for the anti-Communist bill in its final form because "I have now been assured that this will not adversely affect prosecutions under the Smith Act or adversely affect the Internal Security Act." In other words, Kefauver was objecting to one form of punishing people for their ideas on the ground that it might interfere with other ways of punishing them for the same ideas!

Strange Oracle for Liberals

Kefauver did not sustain himself in his lonely position with Milton or Madison. The oracle he consulted was of a different variety. "I talked at great length," Kefauver told the Senate, "with a top official in the Department of Justice. I cannot give his name, because it was a personal conversation, but I know, after talking with him, that the Department of Justice, and I am sure it reflects the views of Mr. [J. Edgar] Hoover, felt that the bill which I voted against the other day would . . . undo everything which had been done over a period of four and a half years. . . . This official complimented me on my vote against it." Kefauver went as far as he could to indicate just how august this imprimatur was when he said, "I have talked in days past with Mr. Hoover. Today I talked at length with a top official of the FBI . . . "We have come to a strange time when the only Senator who votes against outlawry of the Communist party defends himself by citing, not the venerable principles of a free society, but the views of the secret police.

The conversation Kefauver reported (it may be found on page 14398 of the Congressional Record for Thursday, August 19) illuminates the real difference between the opposing forces. Morse and the liberal Democrats in the Senate, like Dies in the House, wanted to make it a crime to be a Communist. They wanted an outlawry bill under which it would be possible to send a man to jail because he was adjudged to be a Communist. The Administration, the rightists like McCarran and the FBI, wanted to proceed indirectly. Instead of sending a man to jail for being a Communist under an outlawry statute, they would send a man to jail for failing to register as a Communist. The reasons for preferring this method, which Congress finally adopted, were set forth by Kefauver.

"This official told me," Kefauver reported to the Senate, "that punishment for political beliefs would make martyrs of many Communists . . . He felt that certain persons might go to the defense of such persons and thus give communism some respectability. The Communist party has already announced that it is not going to register and that its members are not going to register. By refusing to do so they will outlaw themselves. They can then be prosecuted, not for what they think, but for failure to register. World public opinion will be on our side if we handle this problem as Mr. Hoover suggests. We will lose it by prosecution for political beliefs per se."

The Consequences of Registration

There is monumental naivete in the assumption that so transparent a subterfuge will evoke the approval of the world. A man who registers as a Communist will read himself out of society. He will become a second class citizen, barred from government, defense industry and many other types of employment. He will lose the right to a passport. If he does not immediately forego the right to practice a profession, he will certainly lose most of his clientele. He will become an outlaw and outcast. Can our rightists really believe that the world will say this is not prosecution for opinion?

The registration procedure is like the outlawry procedure in a vital respect. In either case it will be assumed that persons who are Communists will hide their views rather than undergo the penalties for their beliefs. Under either mode of procedure it therefore becomes necessary to determine who is a Communist, either to send him to jail for being one or for failing to register as one.

This is the nub of objection to anti-Communist legislation. As the Communists are driven underground, it is assumed that they will not dare take revolutionary positions publicly. They can only be spotted by watching to see if they take non-revolutionary positions on public questions which parallel those of Communist literature and the Communist movement. It then becomes the task of the government to determine whether someone who supports a 35-hour week, let us say, does so because he believes in a 35-hour week or because he is secretly a Communist. In such an atmosphere, it becomes dangerous to advocate social reform. This is why the U.S. Chamber of Commerce so long campaigned for what finally become (via the successive Mundt-Nixon, Mundt-Ferguson and McCarran bills) the Internal Security Act

Dept. of Confusion: When Is An Outlaw Not An Outlaw?

Mr. KEFAUVER. . . . The bill, as it is presently written, does not actually make the Communist party illegal. Is that not correct?

Mr. BUTLER. In my opinion, the bill outlaws the Communist party and makes it illegal. It strips the Communist party of all its rights, privileges, and immunities under the Constitution of the United States and all the laws of the Unted States . . .

Mr. KEFAUVER. I had understood that the Department of Justice was satisfied on the theory that the House bill even with the Butler amendments does not actually outlaw the Communist party; and on the theory that the bill does not outlaw the Communist party, the Department feels that it can still force registration under the Internal Security Act. But the legislative intent now being stated by the Senator from Maryland might be to the effect that the bill outlaws and declares illegal the Communist party . . .

Mr. BUTLER . . . The bill does not outlaw the Communist party by making its activities criminal. It makes the Communist party impossible. It destroys all of its rights, privileges and immunities, and strips it of all legal rights under the Constitution and the laws of the United States.

Mr. KEFAUVER. That is not what the Senator said a few minutes ago.

Mr. BUTLER. That is precisely what the Senator from Maryland said a few minutes ago.

Mr. KEFAUVER. The Senator said a few minutes ago that it completely outlaws the Communist party.

Mr. BUTLER. It does. The Senator from Tennessee is equivocating with words . . .

Mr. KEFAUVER. I do not want to vote for anything which will void the registration provision of the Internal Security Act. I want to give it an opportunity. So a person could be a member, and he would still have to register under the Internal Security Act?

Mr. BUTLER. That is true . . .

Mr. KEFAUVER. By what legal conception could a person be a member of something which legally could not exist?

Mr. BUTLER. I did not hear the question.

Mr. KEFAUVER. How can one be a member of an organization which by law cannot exist?

Mr. BUTLER. I assure the Senator I am not going to worry about that.

—U.S. Senate, Aug. 17, from Con. Rec. pages 14079-82.

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...Kefauver, The One Dissenter, Consulted the FBI for Advice

of 1950. The registration provisions, like direct outlawry, would make all agitation for change hazardous.

Humphrey at His Silliest

In one of the silliest moments of the whole debate, Humphrey said a man "does not have to become a member of the Communist party to express unorthodox ideas. Let him become a member of other parties or of the Republican or the Democratic party, if he wants to express unorthodox ideas." The answer is that under the original standards established by the Internal Security Act and under the new standards added by Humphrey a man or an organization may honestly be Republican or Democratic and still be penalized as "communistic." The original act sets up as one standard for measuring a Communist front "the extent to which the positions taken or advanced by it do not deviate from those of any Communist-action organization . . ."

The Humphrey amendment (text at page 14090 August 17 Con. Rec.) goes much further than the carefully framed Internal Security Act. Among the standards to be applied by a jury "in determining membership or participation in the Communist party" under the Humphrey amendment is whether the accused person "has indicated by word, action, conduct, writing, or in any other way [What other way is there? Does Senator Humphrey believe the Communist underground may use telepathy?] a willingness to carry out *in any manner and to any degree* the plans, designs, objectives or purposes of the organization." The words in italics are sweeping enough to cover the ADA (Americans for Democratic Action) of which Humphrey is a vice-president, or even to endanger a Taft. It was Langer who recalled that Taft had been called a Communist because he favored low cost public housing and slum clearance.

Let Them Dig Ditches . . .

Far from ending the problem by getting rid of Communists, such standards must widen the witch hunt and the terror, and serve the purposes of the extremists. The total nature of their objectives may be seen in two speeches by Senator Jenner at pages 13761-65 of the Congressional Record for August 14. "There is no place in American life," Jenner said, "for agents of the Soviet Union. There is no place in American life for anyone who has ever collaborated with the Soviet fifth column . . . *There is no place even for innocents who scattered the Soviet word mines* . . . If they are foreigners, let us send them home. If they are American citizens, let us deprive them of the right they despise. Let them earn their living as dishwashers or ditch diggers, *but not in places where they can poison our minds.*" (Italics added).

This is the witch hunt in full flavor. Note the fear of "word mines" and of "poisoning our minds." This is the noxious climate which bred the Internal Security Act, an attempt to extend into the world of ideas the principles of pure food and drug legislation. For faith in free discussion, common sense and truth, it substitutes a governmental mechanism for labelling dangerous ideas people might otherwise swallow; the Internal Security Act not only requires Communists to register but to label their publications and broadcasts. The assumption is that people are too stupid to be trusted. A secular *index expurgatorius* must be set up to guide them. The philosophy of the Internal Security Act is that of clerical authoritarianism.

Would You Repeat That, Senator?

"The reason why the present requirement is impossible is that it requires removal of 'persons determined by this section to be Communists,' but no persons are or can be determined by this section to be Communists; and no persons can be determined, under or pursuant to this section, to be Communists, unless it is construed that this means persons determined to be members of the Communist-infiltrated organization, in which case the condition is still impossible, because if the members of the organzation are removed, no one is left to petition."

—Sen. Butler (R. Md.), Aug. 16, Con. Rec. p. 13987.

III

The extent to which the situation has deteriorated in the past four years becomes clear if one glances back at September of 1950, when the Internal Security Act was first passed. Then it was denounced by Attorney General McGrath as hysterical, and vetoed by President Truman. This time the new law expanding the Internal Security Act (for that is what the Congress finally did) was supported by the President and the Attorney General, while the liberal Democrats asked a more severe measure. In the House there were only three votes then for upholding the President's veto (Burdick, *R. N. Dak.*; Javits, *R. N.Y.*, and Marcantonio); this time, there were two (Burdick and Multer, *D. N.Y.*). In the Senate there were ten votes then to uphold the veto (Chavez, Douglas, Graham, Green, Humphrey, Kefauver, Kilgore, Leahy, Lehman and Murray); this time the vote on the final measure was unanimous.

There was a similarity in liberal tactics. Four years ago the liberal Democrats led by Kilgore (*D. W. Va.*) tried to block the Internal Security Act by proposing instead that the President be allowed to throw all suspected Communists

Dept. of Confusion: Deliberative Assembly at Work

Mr. BUTLER . . . I have consulted with the Senator from Minnesota [Mr. Humphrey] about the amendments and he approves of them.

Mr. HUMPHREY. Oh, Mr. President, I ask the Senator to wait; no, no.

Mr. BUTLER. Then, let me say that the Senator from Minnesota is willing to accept them.

Mr. HUMPHREY. No, no. I am unhappy about them . . .

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Mr. KEFAUVER. I must say the Senator from Michigan has not contributed much toward clarifying the matter; if in one place it is not a political party, and then later it is stated it shall be treated as a political party.

Mr. FERGUSON. I am saying just the opposite.

Mr. KEFAUVER. Is this not all the more reason why we should be able to read the material?

Mr. FERGUSON. The Senator had the paper.

Mr. KEFAUVER. I know; but I could not keep it long, because there is only one copy for 96 Senators.

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Mr. HENNINGS . . . My inquiry is whether the Administration approves of the action proposed to be taken and of the amendments which have been submitted here tonight.

Mr. BUTLER. Yes. The Attorney General is cognizant of all these amendments and concurs in them.

Mr. HENNINGS. Then he approves, too, I take it, the philosophy and the objectives of this proposed legislation.

Mr. BUTLER. I think I can safely say that the administration is certainly not opposed to this bill. Whether I can say it is for it or not, I do not know . . .

—Senate debate on the Communist control bill, Aug. 16, Con. Rec. 13988-90.

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Will That Sleeping Giant, Labor, Awaken Too Late?

into concentration camps on a declaration of national emergency. The result was that Congress finally passed both measures: the detention camp provisions were added to the original McCarran bill. The difference is that we were at war in Korea in 1950 while in 1954 with the end of the Korean and Indo-Chinese wars there is relaxation of tension. Another difference is that this time the storm arose over a bill which was opposed by the entire labor movement. The Butler bill was intended to cap the Internal Security Act of 1950 by bringing labor unions under the jurisdiction of the Subversive Activities Control Board.

A Noose for the Labor Movement

No one is quite sure what the rest of the new legislation means. The excerpts reprinted in this issue from the debate show that many members of Congress did not really know what they were voting. No official copy of the bill as passed is yet available as we go to press. There is some reason to believe that the sections dealing with Communists do not really change the situation as it exists today under the Internal Security Act. But there is no doubt that the right has won a sizeable victory in the provisions bringing labor under the Board. The Ives amendment does not, as some suppose, exempt CIO, A.F. of L., miners and the railroad workers. It merely says membership in these federations shall be regarded as "prima facie" evidence of loyalty and non-subversion. A "prima facie" finding is rebuttable; it is not conclusive. This will wreck the Left unions and lay the foundations for a Red hunt in other unions. All of them are "infiltrated" by ex-Communists. Labor opposed the bill because it feared that the same thing would happen before the Board as has happened in government loyalty proceedings. They begin with Communists but end with any non-conformist.

"A Plague on Both Their Houses"

Those foolish enough to be complacent about the liquidation of the Left-wing unions and prepared to dismiss as purely theoretical the danger to the rest of labor face a bitter awakening. The battle between the U.E. and the I.U.E., between Emspak and Carey, played its part in bringing on this legislation, as did the Humphrey-Morse proposals earlier to give the National Labor Relations Board the same power to decide which unions were ideologically pure enough for collective bargaining.

In the Humphrey subcommittee report of March 2, 1953, on "Public Policy and Communist Domination of Certain Unions," attention was called to "an attitude reflected in certain statements issued by General Electric . . . The essence of the theme is that there is little to choose from between leftwingers and rightwingers. 'We believe'—the General Electric has said—'they have in the end the same objectives. We believe that what each side advocates would result, in the long run, in substantially the same thing for our employes, our company, and our country'" (Con. Rec. p. 13456, Aug. 11, 1954). That is capital's handwriting on labor's wall. . . This is the prize bill the U.S. Chamber of Commerce so fervently desired. This is what the Chamber had in mind when it warned some months ago that 1954 might be the last chance to get such legislation. This is a noose for the labor movement. Senator Lehman in the Senate on August 11 pointed up the sardonic aspect of the spectacle when he said:

> **"It strikes me as exceedingly strange that the very members of this body who express the greatest distrust of Government and of bureaucracy in regard to measures designed to advance the welfare of working people, are the first to demand the intervention of Government . . . to restrict and control the activities of working people. The pending bill would give to the government . . . the power and authority to decide which unions are sound and patriotic and which are Communist infiltrated and hence should be liquidated."**

IV

The United States, with this new legislation, moves closer toward Fascism. The movement is as slow as it is inexorable. We stand on the threshold of a new period in which a legal offensive is possible against that sleeping giant, the American labor movement, the only potential organized mass opposition to an American corporate State. The Democratic party is in complete moral collapse, as far from Jefferson as the Republican party is from Lincoln.

Freedom has been corroded at its very foundations and the American people are badly in need of re-education in the fundamental principles on which the Republic was established. The fight must be carried on in terms of these principles and not cowardly tactics. The case against suppression of the Communists is not that this will make them martyrs, or weaken existing legislation, or make the work of the FBI more difficult. The case against such suppression is that it is unworthy of our traditions, that it dishonors America's great past, that there can be no freedom without risk, that liberty is indivisible, that any exception of any political party or theory must whittle away the Bill of Rights and stop up these channels of free discussion on which peaceful change and the orderly satisfaction of human aspirations depend. Those who persist through these dark times in affirming these principles will be doing their duty by their country and will earn an honorable place in its history. It is in this spirit that we must all carry on.

Next Week: The Senate and the First Amendment in the Lamont, Unger, Shadowitz Contempt Cases.

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